
(1995) 07 DEL CK 0046

In the Delhi High Court

Case No : Criminal Writ Appeal No's. 134, 181, 348 and 555 of 1992

Harmeet Singh Ghai

APPELLANT

Vs

Anand S. Khullar and Others
 Savitri Devi Vs Shanand
S. Khullar
 Deputy Commissioner (Recovery) Sales
Tax, Delhi Vikas Rubber and Chemical Vs M.R. Arora

Abhey Kumar Jain Vs The Assistant Collector of Sales Tax and
Others
 Satya Prakash Jindal Vs The Assistant Collector
Zone-VI, Vikas Bhawan, New Delhi and Others

RESPONDENT

Date of Decision : 06-07-1995

Acts Referred:

Delhi Land Reforms Act, 1954 — Section 136, 138, 3
Delhi Sales Tax Act, 1975 — Section 21, 22, 23, 24, 25

Citation : (1995) 59 DLT 152 : (1997) 2 ILR Delhi 437

Hon'ble Judges : D.K. Jain, J

Bench : Single Bench

Judgement

D.K. Jain, J.

(1) The issue arising for consideration in this batch of writ petitions relates to the validity of the action already taken or proposed to be taken by the Sales Tax Authorities against the petitioners for effecting recovery of arrears of Sales Tax and Central Sales Tax payable by then under the Delhi Sales Tax Act 1975, (for short the Local Act) and the Central Sales Tax Act, 1956 (for short the Central Act) by taking recourse to arrest and detention in Civil prison of the petitioners as provided under the provisions of Sections 136 and 138 of the Delhi Land Reforms Act, 1954 (for short the Land Reforms Act) and the rules made thereunder.

(2) Apart from the question of property and validity of the action taken by the respondents in the case of each of the petitioners, which we shall deal separately, the short but the prime common question requiring consideration is whether a person is liable to be arrested and detained for a total period of 15 days, prescribed in Section 138 of the Land Reforms Act in relation to the

demand in a recovery certificate, being the total demand created on account of various assessments separately made or can such a person be detained separately for a period of 15 days for each of the demands for different assessment years for which a joint or separate/several recovery certificates are issued by the assessing authority for recovery as arrears of land revenue.

(3) To appreciate the controversy involved and the rival contentions. We may briefly refer to the facts in Crl.Writ Petition No. 174/92 - Harmeet Singh Ghai Vs. Anand S. Khullar, which was treated as the main case.

(4) The petitioner, who was running his business under the name and style of "Reliance Enterprise as proprietary concern, was a registered dealer under the Local Sales Tax Act and the Central Sales Tax Act. The assessments for the years 1978-79 to 1985-86 were framed u/s 23 of the Local Act, which resulted in an additional demand totalling Approximately 3.5 crores. It is stated that on 23 February, 1992 a public notice was issued by the Deputy Commissioner (Recovery), respondent No. I herein, giving a list of 27 defaulting dealers, the petitioner being one of them advising them to contact him and settle the matter regarding recovery of outstanding dues failing which appropriate action under the law was threatened. It is alleged that a day prior to the publication of the said notice, i.e., 22 February, 1992, respondent No. 1, accompanied by respondent No.2/Assistant Collector, Zone-III, New Delhi came to the residence of the petitioner, took him to the Parliament Street Police Station and from there he was sent to Tihar Jail for being detained in civil prison for a period of 15 days, which was to expire on 7 March, 1992. It is further stated that respondent No. 1 again ordered detention of the petitioner for a further period of two days i.e., up to 9 March, 1992, which was further extended up to 20 March, 1992. It is at this stage that the petitioner's wife, having failed to get him released, filed the present writ petition seeking a writ in the nature of Certiorari quashing the order of detention passed against the petitioner, and a further writ in the nature of Habeas Corpus directing release of the petitioner forthwith, inter alia, on the grounds that (1) having failed to make proper investigation and enquiry and without following the law and procedure as laid down in the Land Reforms Act and the rules framed there under respondent No. 1 had no jurisdiction to take the petitioner in custody for the recovery of alleged arrears of sales tax against Reliance Enterprises (2) no opportunity of hearing having been granted before arresting and detaining the petitioner in civil prison the principles of natural justice have been violated (3) by ordering arrest and detention of the petitioner in civil prison, respondent No. I had not only exceeded his jurisdiction but had in fact abused his powers by detaining the petitioner for a period exceeding 15 days in utter disregard of the mandatory provision of Section 138 of the Land Reforms Act and (iv) the application of Section 138 of the Land Reforms Act is limited to the rural areas only and could not be extended to the urban areas under the provisions of the Local Sales Tax Act.

(5) Besides the said two respondents, the Commissioner of Sales Tax, New Delhi

has also been impleaded as respondent No. 3

(6) In response to show cause notice, an answer was filed on behalf of the respondents and the petition is resisted. It is explained that on receipt of recovery certificates from the Sales Tax Officer in respect of aforementioned assessment years in Form ST-17, respondent No. 1 issued various notices and warrants to the petitioner but there being no response, warrants of his arrest were issued. Initially, the warrant of detention was issued by respondent No. 1 on 22 February, 1992 u/s 138 of the Land Reforms Act, in his capacity as Collector of Sales Tax, for detention of the petitioner up to 7 March, 1992 on which date he was required to be produced before respondent No. 1; the petitioner being in the hospital, was not produced before respondent No. 1 and the date of his production was extended first up to 9 March, 1992 and thereafter to 20 March, 1992. However, on 9 March, 1992, another warrant of detention was issued by respondent No. 1, directing petitioner's detention in civil prison up to 20 March, 1992. The said two warrants of detention placed on record, indicate that whereas the warrant dated 22 February, 1992 purports to have been issued for non-payment of a sum of Rs. 3,59,28,581.00 - "total" for all the assessments separately made till then, clubbed together, while the warrant dated 9 March 1992 was issued for non-payment of a sum of Rs. 2,15,425.00 for the assessment year 1978-79 - period also covered by the earlier warrant of detention. It appears that on 21 March, 1992, respondent No. 1 issued yet another memorandum for the production of petitioner before him for 3 April, 1992 and extended the period of his detention till then. The stand of the respondent is that dues of sales tax pertaining to different years cannot be clubbed for the purpose of initiating action u/s 138 of the Land Reforms Act and for the recovery of arrears of tax for each of the years separately, and a dealer could be detained for a period up to 15 days separately for each recovery certificate based on relevant assessments separately made, and thus the total aggregate period of detention may exceed 15 days. They say that the said Section is only one of the modes of recovery of the arrears of tax as prescribed in Section 136 of the Land Reforms Act but the character of such recovery is determined by the Sales-tax Act.

(7) We have heard Mr. G.L. Rawal, Advocate for the petitioner and Mr. S.K. Dholokia and Mr. Arun Jaitley, Senior Advocates for the respondents at considerable length.

(8) To appreciate the controversy involved it would be appropriate at this state to notice the relevant provisions of the Local Act and the Land Reforms Act and the Rules framed thereunder. Chapter V (Sections 21 to 31) of the Local Act deals with returns, assessments, recovery and refund of taxes. Section 23 of the Local Act deals with assessment and lays down that the amount of tax due from each dealer shall be assessed separately for each year. Section 25 deals with payment of the assessed tax and its recovery. Sub-section (1) of the Section says that the amount of tax due per return filed and/ [or assessed or re-assessed or re-

computed for any period u/s 23 or Section 24 shall together with penalty, if any, directed to be said. shall be paid by the dealer etc, in the Government treasury/ Reserve Bank of India etc. within 30 days of service of notice of demand issued by the Commissioner for the purpose. Sub-section (3) thereof provides that if the amount of tax or penalty is not paid within time specified under sub-section (1) or extended under sub-section (2), the dealer will be deemed to be a defaulter in respect of that amount. Subsection (7) of the Section lays down that "any amount of tax or penalty in respect of which a dealer or person is in default,..... shall be recoverable as an arrear of land revenue".

(9) Section 70 of the Local Act attracts the application of the provisions of the Land Reforms Act for the purpose of Sales-tax recoverable as arrear of land revenue and lays down that for recovery of any amount recoverable as arrear of land revenue under the Act, the provisions of the said Act shall, "notwithstanding anything contained in that Act or in any other enactment, be deemed to be in force throughout Delhi and the provisions of the Revenue Recovery Act, 1890. shall have effect accordingly."

(10) For carrying out the purpose of the Act, The Delhi Sales-tax Rules, 1975 have been framed u/s 71 of the Local Act which, inter alia, prescribes procedure for recovery of the Government dues. Sub-rule (2) of Rule 27, falling in Chapter V, dealing with recovery proceedings lays down that in case any amount is recoverable as an arrear of land revenue in terms of sub-section (7) of Section 25 of the Local Act, the assessing authority shall issue to the Collector a recovery certificate in Form ST-17, setting out the sum due as Sales-tax etc, for which the recovery certificate is issued including specific mention of "other dues" under the Act recoverable as an arrear of land revenue, with reference to provisions of sub-section (7) of Section 25 of the Local Act and Rule 27 there under requesting the" Collector, Sales-tax, New Delhi, Deputy Commissioner, Revenue Assistant, Tehsildar, Delhi to recover the sum from the defaulter his surety, if any.

(11) The Land Reforms Act was enacted, inter alia, to make provision for and specify the authorities competent to, and charged with the duty of, recovering land revenue and tax recoverable as land revenue and the procedure required to be followed for the said recovery. Section 3 thereof is the definition Section which inter alia, defines the term "Dy. Commissioner" to include, a Collector, an Additional Collector, a Revenue Assistant empowered by the Chief Commissioner by notification to discharge all or any of the functions of a Dy. Commissioner under the Act and an Assistant Collector as aforesaid. Chapter Iv of the said Act dealing with land revenue contains Sections 136 and 138. Section 136 sets out the procedure for the recovery of an arrear of land revenue and specifies the various processes for recovery including:

(A)by serving a writ of demand or citation to appear on any defaulter;

(B)by arrest and detention of his person;

(C)by attachment and sale of his movable property. "

(12) Section 138 of the Act, dealing with the arrest and detention reads as follows:

ANY person who had defaulted in the payment of an arrear of land revenue may be arrested and defamed in custody Dy. Commissioner (Recovery), Sales Tax & Ors. up to a period not exceeding 15 days unless the arrear with costs, if any, of the arrest and detention are sooner paid :

PROVIDED that no woman or minor shall be liable to arrest or detention under this section."

(13) The Delhi Land Reforms Rules, 1954 were framed under the Land Reforms Act. Chapter Iv of the Rules deals with land revenue, Part F whereof (Rules 104 to 108) deals with coercive processes. Sub-part (c) thereof deals with "arrest and detention". Rule 119 whereof sets out the procedure for it, which reads as follows :

119.Procedure-(1) Whenever the Tehsildar causes a defaulter to be arrested, he shall without delay report the fact for the information of the Deputy Commissioner and the Revenue Assistant

(2)After arrest, a defaulter shall be brought without delay before the officer who issued the warrant and shall not be detained in custody unless there is reason to believe that the process of detention will compel the payment of the whole or a substantial portion of the arrear. If an order for detention is passed, it shall specify the date on which the detention will cease if the arrear is not sooner paid.

(3)If the officer who issued the warrant sees fit, when the defaulter is produced before him, to give him further time, to pay the arrears, instead of detaining him, he may release the defaulter on his undertaking to pay the arrear within the period fixed. Should it become necessary to arrest the defaulter again, fresh warrant in L.R. Form 29 shall invariably be issued, and a separate fee levied. When a warrant has been once executed by the arrest of defaulter, the same warrant cannot be executed a second time."

(14) From the scheme of the Land Reforms Act and the Rules made there under and in particular Rule 119 of the Land Reforms Rules, it is amply clear that though arrest and detention of a defaulter is one of the modes of recovery of an arrear of land revenue but a warrant of arrest u/s 138 of the Act cannot be made and issued casually or on a mere receipt of the recovery certificate, As noticed above, Rule 119 (2) of the Land Reforms Rules requires production of the defaulter, who is arrested, before the officer who issued the warrant without delay and mandates that such defaulter shall not be detained in custody unless there is reason to believe that the process of detention will compel the payment of the whole or a substantial portion of the arrear. The said sub-rule thus, necessitates an inquiry into the question or a conscious attempt to ascertain if the detention of the defaulter would be productive of payment of arrears or a substantial portion thereof. The detention order cannot be issued casually or

mechanically or arbitrarily at one's own whim or fancy. The sub-rule obligates upon the officer concerned to decide on the basis of the material before him and though there is nothing in Section 138 of the Act or Rule 119 of the Land Reforms Rules requiring him to give an opportunity to the defaulter of being heard, he has to consider if any evidence is tendered or submissions are made by the defaulter in this behalf and then find out if there is any justification for detaining the defaulter. It is only after he records his satisfaction that the detention of the defaulter will compel him to make the payment of the whole or substantial part of the arrear that he can direct the detention of the defaulter. Before ordering his detention, the officer concerned has to satisfy himself that the defaulter has the means to pay but does not pay and records satisfaction as to it. The detaining authority has to consider the matter from this angle and satisfy itself if the defaulter has the means but is willfully withholding payment or is fraudulently evading payment. There must be some material on record to enable the authority to entertain the necessary belief for recording satisfaction in this behalf. If he is not so satisfied, the officer is under an obligation to release the defaulter. This, in our view, is the condition precedent for ordering the detention of the defaulter.

(15) We are fortified in our view by the pronouncement of the Supreme Court in *Collector of Malabar Vs. Erimmal Ebrahim Hajee*, 32 Itr 125(1) and in *Ram Narayan Agarwal Vs. State of U.P.*, 1983(54) Stc 273 (2). In the last mentioned case Section 281 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and Rules 251 of the U.P. Zamindari Abolition and Land Reforms Rules, 1952, which are *pari Materia* to Section 138 of the Land Reforms Act and Rule 119 of the Land Reforms Rules respectively, came up for consideration. In the same judgment the Supreme Court also observed that a writ of demand or citation should ordinarily be issued to the defaulter before resorting to the drastic process of issuing an arrest warrant and even if a formal writ of demand is not issued, it is implicit in the nature of the process to be issued for arrest that the defaulter concerned should have prior notice of the issue of the certificate for recovery to enable him to pay up the amount demanded to avoid arrest

(16) On the same analogy we feel that in the process of determining and satisfying himself that the defaulter has the means to pay but has clandestine designs not to pay, the rule of natural justice would demand that the defaulter is allowed an opportunity to explain that he genuinely has no means to pay although, as noted above, there is nothing in the Land Reforms Act or the Rules which requires the Collector to give an opportunity to the defaulter to be heard before warrant of arrest/detention order is issued against him. If he is able to satisfy the Collector and if after hearing him the authority feels that the defaulter has no means to pay the whole or substantial amount of arrears, the defaulter cannot be detained u/s 138 of the Land Reforms Act.

(17) We may note here itself that Mr. Dholakia, learned counsellor the respondents fairly conceded before us that there is nothing on the record to

show that any exercise of satisfaction postulated in Rule 119 of the Land Reforms Rules, was undertaken in any of the cases before us. It is, Therefore, clear that respondent No. 1 made and issued warrants of arrest and detention orders mechanically without following the mandatory requirement of holding the investigation/ enquiry postulated in Rule 119 and in violation of the principles of natural justice. Respondent No. 1 has failed to record his reasons to believe that the defaulter is willfully withholding the payment no material is forthcoming upon which such a belief could be based Grounds No. 1 and 2 by way of challenge to the detention order are thus, made out, rendering the detention of Harmeet Singh Ghai and for the same reason, in other connected cases, illegal.

(18) The next question is whether a detention ordered on the basis of a recovery certificate issued by the Sales-tax authority can exceed 15 days if the demand/ arrears therein relate to assessments for several years, separately made. The contention of the respondents is that according to Section 23 of the Local Act, separate assessments are made for each year and, Therefore, the period of detention mentioned in Section 138 is for non-payment of demand for each of the year and as such a total period of detention can exceed 15 days. The proposition set up is too widely stated and is not borne out by a proper reading of Section 138 of the Act.

(19) True that for the purpose of assessment and recovery of tax, penalty or interest in respect of a particular assessment year, each year is independent and a dealer can be in default for one or more years and that if a dealer is deemed to be in default on his failure to pay tax or penalty within the time specified in Section 25(1) or (2) of the Local Sales-tax Act, recourse can be had to sub-section 7 of Sec- corporation 25 to recover the same as an arrear of land revenue for which a recovery certificate can be issued to the Collector in form ST-17 in respect of that particular year and the Collector can, on receipt of such a certificate, proceed to effect recovery immediately thereafter. For subsequent assessment year, a fresh recovery certificate may be issued and there may be as many recovery certificates in form ST-17 as many are the notices of demand in ST-16. On each of the recovery certificates so issued, the Collector may legitimately start fresh recovery proceedings u/s 138 of the Act, But if the certificate issued in form No. ST-17 is for a consolidated demand for a number of years, the Collector acting thereon cannot detain a defaulter for a period exceeding 15 days stipulated as maximum in Section 138.

(20) One basic thing to be kept in mind, and as it would be clear from the examination of the relevant provisions of the Land Reforms Act, is that the detention of a defaulter is not for any offences committed by him or by way of punishment for defaults in making the payment. It is just one of the modes of recovery of the amount due and recoverable as arrears of land revenue. All what Section 138 holds is that a person, who has defaulted in the payment of an arrear of land revenue may be arrested and detained for a period of 15 days. An arrear of land revenue accrues only for the amount for which a recovery

certificate is issued, u/s 25(7) of the local Act, in Form ST-17, irrespective of the period/assessment year(s) covered by it. Though the assessment by an assessing authority has to be for each year but the requirement of Section 25(1) read with Rule 27 of the Sales-tax Rules is that a notice of demand shall be issued in Form ST-16 after the assessment has been completed. It may be noted that whereas Form ST-16 significantly mentions the year/quarter/month for which the taxable turnover has been assessed and tax/penalty/ interest payable for that period is determined, no parallel provision has been shown that recovery certificate in Form ST-17 must also be issued separately for each year. On the contrary, a bare perusal of Form ST-17, on the basis whereof the Collector is to proceed, shows that there is neither provision nor requirement of mentioning the demands issued with reference to a particular year/quarter/month. The assessing authority, when it issues it, has only to certify the then existing total demand on account of Sales-tax etc. irrespective of the period or assessment year or years. The relevant portion of ST-17 is set out below :

"THIS is certified that a sum of Rs..... which is due from M/s. on account of sales tax, penalty and interest as per details given in the table below, is in arrear;

PARTICULARS of arrears Amount in arrear (i) Sales Tax (ii) Penalty. (iii) Interest u/s 27(1) (iv) Interest u/s 27(2) up to the date of issue of this certificate. (v) Composition. (vi) Other dues under the Act recoverable as an arrear of land revenue. Total

2. With reference to the provisions of sub-section (7) of Section 25 of the Delhi Sales Tax Act, 1975 and Rule 27 made there under you are hereby requested to recover the said sums as if it were an arrear of land revenue. The amount recovered may please be credited in the appropriate Government Treasury in the Consolidated Fund of India (Delhi) under Head "040 Sales Tax Receipts-State Sales Tax Receipts."

3. In addition to the amount specified in the certificate aforesaid, interest chargeable under sub-section (2) of section 27 from the date of this certificate till realisation is also recoverable as an arrear of land revenue and may be recovered accordingly.

(21) We are, Therefore, of the view that the recovery certificate, on which the writ of demand and the warrant of arrest is to be issued and the question of issuance of detention order is to be determined is in relation to entire demand due from a defaulter at the time of its issue irrespective of the assessment year/s to which it pertained. Support is also lent to this view by Sub-rule (2) of Rule 108 of the Land Reforms Rules, laying down (in case of arrears of land revenue of land which also is recoverable as an arrear of land revenue) that the process shall ordinarily issue in respect of the whole of the arrears due from a defaulter whether such arrears are due in relation to more than one Khata/Khatauni. We are unable to accept the contention of the respondents that even though a

recovery certificate in Form ST-17 may show a consolidated demand relating to a number of years, there must be as many detention orders, for periods not exceeding 15 days, as the number of assessment orders, demands relating to which have been consolidated in one recovery certificate. This is not warranted by law and would in fact run counter to the letter and spirit of the relevant provisions. Once a warrant of arrest is issued on the basis of a particular recovery certificate, and the question of his detention is decided under Rule 119 of the Land Reforms Rules, the defaulter is either detained for a period not exceeding 15 days or released, as the case may be. In either case, the said recovery certificate gets exhausted for the purpose of Section 136(b) and 138 of the Land Revenue Act and no further detention can be based on it. Detention for a period over and above 15 days, and the order made or proposed to be made in this behalf are and would be in excess of jurisdiction.

(22) We may, however, clarify that this may not be taken as to mean that once a particular recovery certificate is exhausted, the mode of recovery of an arrear of land revenue, comprised of dues under the same Statute, by arrest and detention stands exhausted for the recovery of future dues, under the Statute, for all times to come. For defaults relating to subsequent assessments, not covered by the earlier recovery certificates, on the assessing authority issuing fresh recovery certificate in Form ST-17, the Collector has again to proceed u/s 138 of the Act read with Rule 119 to decide if there is a ground/ justification for the defaulter's detention.

(23) The fourth and the last ground taken in challenge to the detention orders that Section 138 of the Land Reforms Act applies only to rural areas and not to municipal area of Delhi and as such unpaid amount of Sales Tax could not be recovered as arrears of land revenue is without merit. No doubt sub-section (2) of Section I of the Land Reforms Act ostracizes the application of the Act to the areas included in a municipality or notified area etc. but Section 70 of the Local Act, which is a later Act, contains a non-obstante clause and lays down that notwithstanding anything contained in the Land Reforms Act, it would be deemed to be in force throughout Delhi for the recovery of any amount recoverable as arrear of land revenue under the Local Act.

(24) We may now examine the validity of the respondents action in arresting and detaining each of the petitioners for different periods, in the light of the aforesaid legal position. Crl. Writ Petition No. 134/92 (Shri Harmeet Singh Ghai v. Shri S. Khullar & Others)

(25) The facts of this case have already been narrated above in extenso as illustrative. The case involves both the issues which have been discussed above, viz.. the period of detention and the mandatory procedural requirements to be complied with before actually detaining a defaulter. Although recovery certificate issued in Form ST-17 has not been placed before us but from the warrant of detention dated 22 February, 1992, it is clear that the warrant was issued for the recovery of Rs. 3,59,28,581.00p. which indisputably was the arrears of tax

pertaining to the years 1978-79 to 1986-87, in respect of which the petitioner was treated as a defaulter. This is also clear from the public notice which appeared in the newspapers on 23 February, 1992 (page 245). That being so, in our opinion, only one detention order could be made and was infact issued initially. The second detention order dated 9 March, 1992, though purports to be based on the subsequent recovery certificate. relates to arrears only of the year 1978-79, already covered by the first recovery certificate and the warrant of arrest dated 22 February, 1992. in our view. is illegal. We are, Therefore, of the considered opinion that the detaining authority exceeded his jurisdiction in detaining the petitioner for a period beyond 15 days by issuing fresh warrant of detention after the expiry of 15 days fixed in the first warrant of detention.

(26) As noticed in the earlier part of this judgment, the procedure requisite for making a detention order having not been followed. the detention order(s) are bad in law and the detention even for the initial period of 15 days was also illegal. As a result, we have no option but to quash the warrants of detention dated 22 February, 1992 and 9 March, 1992. We accordingly, quash all the warrants of detention issued against the petitioner for the recovery of Rs. 3,59,28,581 .00p and make the Rule absolute.

(27) Before parting with the case we may note that Mr. G. L. Rawal, learned counsel for the petitioner had also contended that Mr. A. "S. Khullar, when he issued the warrant of arrest and detention in his capacity as Collector of Sales-tax, had no jurisdiction, being not, at the relevant time, empowered under the Land Reforms Act to issue such a warrant and the requisite notification, conferring the powers of the Collector on him had been issued only on 31 March, 1992 and published in the Delhi Gazette on 30 April, 1992. He had also alleged that Mr. Khullar had fabricated certain documents with a view lo detain the petitioner for a period exceeding 15 days. Since we have quashed all the warrants of detention issued by Mr. Khullar against the petitioner, we consider it unnecessary to go into this controversy.

OTHER writ petitions (ii) CrI.W.P.No.181/92-Smt. Savitri Devi Vs Shri Anand S. Khullar. (iii) CrI.W.P. 348/92 - M/s Vikas Rubber & Chemical Vs Shri M.R. Arora, Assistant Collector of Sales-tax. (iv) CrI.W.P. 555/92 - Shri Abhey Kumar Jain Vs The Assistant Collector of Sales-tax & Others. (v) CrI.W.P. 563/92 - Shri Satya Prakash Jindal Vs The Assistant Collector, Zone-VI, Vikas Bhawan, New Delhi & Others. (vi) CrI. W.P. 410/93 - Shri Surinder Kumar & An. Vs The Asstt. Collector of Sales Tax & Others.

(28) In all these writ petitions the grounds of challenge of the detention order(s) are the same as in CrI. Writ No. 134/92 (Shri Harmeet Singh Ghai v. Shri A.S. Khullar). Counsel appearing for the petitioners had stated that they adopt the submissions made by Mr. Rawal in that writ petition. In all these cases (except in CrI. W. No. 410/93) the petitioners have undergone detention for a period of 15 days. In CrI. W.No-410/93 the petitioner was already been detained for a period exceeding 15 days and in all cases, the petitioners apprehend further

detention(s). Since in all the writ petitions one of the grounds by way of challenge to the detention order is that procedure requisite for issuing a warrant of arrest and ordering detention, as postulated by Rule 19 of the Land Reforms Rules, has not been followed and we have held that failure to do so vitiates the detention, it is not necessary to narrate the facts of these cases. As noted above, Mr. Dholakia learned counsel for the respondents had conceded before us that there, was nothing on record to show that any such exercise was undertaken. Consequently, we quash the warrants of detention already issued or proposed to be issued, against each of the petitioners on the basis of recovery certificates issued for the entire demand due from them at the relevant time when the last recovery certificate in Form ST-17 was issued and make the Rule absolute.

(29) For the foregoing reasons, all the writ petitions are allowed, leaving the parties to bear their own costs.